

FILED
HARRISBURG, PA

AO 241 (Rev. 09/17)

AUG 05 2024

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

PER

DEPUTY CLERK

United States District Court		District: <u>Middle</u>
Name (under which you were convicted): <u>Cumberland County</u>		Docket or Case No.: <u>1292-2014</u>
Place of Confinement: <u>Dauphin County Prison</u>	Prisoner No.: <u>079063</u>	
Petitioner (include the name under which you were convicted) <u>Johnnie McCollum</u>	Respondent (authorized person having custody of petitioner) v. <u>Gregory Briggs</u>	
The Attorney General of the State of: <u>Pennsylvania</u>		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Cumberland County

- (b) Criminal docket or case number (if you know):
- 1292-2014

2. (a) Date of the judgment of conviction (if you know):
- Jan 6th 2015 - Dec 4th Forfeiture

- (b) Date of sentencing:
- Jan 6th 2015

3. Length of sentence:
- 5-15 years

4. In this case, were you convicted on more than one count or of more than one crime?
- ☒
- Yes
- ☐
- No

5. Identify all crimes of which you were convicted and sentenced in this case:
- Robbery - Theft By Unlawful taking, Conspiracy to Robbery

6. (a) What was your plea? (Check one)

☒ (1) Not guilty ☐ (3) Nolo contendere (no contest)
☐ (2) Guilty ☐ (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: Superior Court

(b) Docket or case number (if you know): Dont know

(c) Result: Affirmed in part vacated in part

(d) Date of result (if you know): Dont know

(e) Citation to the case (if you know): Dont know

(f) Grounds raised: Sufficiency of evidence on All counts, Inconsistent Statements raised by Cooperating Co-Defendants. Spillover one (failure to sever trials)

(g) Did you seek further review by a higher state court? ☒ Yes ☐ No

If yes, answer the following:

(1) Name of court: PCCA Court Cumberland

(2) Docket or case number (if you know): Dont know

(3) Result: Affirmed

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- (4) Date of result (if you know): Don't Know
- (5) Citation to the case (if you know): Don't Know
- (6) Grounds raised: Ineffective Assistance of Counsel, - failure to cross-examine on Inconsistent Statements, failure to file for A severance failure to Adhere to trial Strategy.

(h) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

- (1) Docket or case number (if you know): _____
- (2) Result: _____
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: Superior
- (2) Docket or case number (if you know): Don't Know
- (3) Date of filing (if you know): Don't Know
- (4) Nature of the proceeding: Direct Appeal
- (5) Grounds raised: Failure to Strike Jurors, Failure to Raise Mitigating factors, Counsel Abandonment.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes ☐ No

(7) Result: Affirmed Appeal rights reinstated Due to Counsel Abandonment

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(8) Date of result (if you know):

Don't know

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result:

(8) Date of result (if you know):

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☐ Yes ☒ No(2) Second petition: ☐ Yes ☒ No(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

Because Counsel Abandoned me the first go around, the second time my lawyer got fired I went pro-se. And he took his time giving me my file. So I got time barred. I got my rights back and then I filed for the Jail never sent back. It was for me.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Failure to Strike Bias Jurors - Ineffective Assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Jurors were granted Permission by my Attorney Gregory Abeln to Participate in determining my guilt for a Robbery after they shared Stories of being robbed Personally and being affected by it. Any reasonable Attorney would have Struck them and being as though he didn't I Suffered Prejudice as a Result by having People Serve on the Jury who were Victims of the Same Crime I was on trial for.

(b) If you did not exhaust your state remedies on Ground One, explain why:

I went threw 2 Instances of Client Abandonment got my appeal rights Reinstated twice and the last time I filed my Pro-se Appellant brief in the Superior Court the Prison I was at must have tampered with my outgoing mail. I Put in Multiple Grievances in regards to my legal mail not getting to its Intended destination. I didn't get a Chance to exhaust all remedies because I was moved out of that Jail in the Process of following up on this issue. I transferred from State to County Custody and

Wasn't permitted to bring all my legal work along. I didn't Exhaust My State remedies due to Administrative Interference

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(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes☐ No(2) If your answer to Question (d)(1) is "Yes," state: PCRAType of motion or petition: PCRA

Name and location of the court where the motion or petition was filed:

Cumberland County Court
House Sq. Carlisle PA 17013

Docket or case number (if you know):

~~2014-000000~~ 1292-2014

Date of the court's decision:

Don't know

Result (attach a copy of the court's opinion or order, if available):

Don't have / DestroyedIn a filed

(3) Did you receive a hearing on your motion or petition?

☒ Yes☐ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☒ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Superior Court 601 Commonwealth Ave.PA Judicial Center HOB PA 17101

Docket or case number (if you know):

Don't know

Date of the court's decision:

Don't know

Result (attach a copy of the court's opinion or order, if available):

Don't have / DestroyedIn a filed

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: None further

GROUND TWO:

NO PSI was ever done - nor requested by the Court
Prior to Sentencing failed to place adequate reasons on the record for dispensing
 (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): with report

I was sentenced without the benefit of a Presentence Investigation Report
At my sentencing hearing the Court did not obtain any information regarding my
Current Situation or Individual needs. My Character and Potential response to rehabilitation
Programs was not thoroughly assessed.

(b) If you did not exhaust your state remedies on Ground Two, explain why: My lawyer said A PSI Didn't
Apply to me because I was under 21 at the time of Sentencing so it was a meritless
Issue that he wouldn't waste his time pursuing.

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: It never got litigated due
to the Attorney saying it wasn't relevant for Appeal purposes.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

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Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☒ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Because Attorney Said it didn't have merit because I wasn't 21 at the time of Sentencing. So I wasn't entitled to A Post

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two : None further.

GROUND THREE:

Ineffective Assistance of Counsel - failed to Uncover and Investigate and Present Mitigating evidence At Sentencing.

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

My trial Attorney never attempted to follow up on Mitigating evidence I offered in regards to Substance Abuse History, mental health history and the trauma I endured growing up in an environment where Drug Selling, Abuse and violence was normalized. I told him my whole life story and he ignored Everything I Said.

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(b) If you did not exhaust your state remedies on Ground Three, explain why:

Administrative Interference
I sent my Direct Appeal out and it never made it to its intended
destination. I had problems in the past with Prison Administration playing with
my mail. I filed a grievance but never got the chance to exhaust all remedies.

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No(2) If your answer to Question (d)(1) is "Yes," state: PCRA

Type of motion or petition:

PCRA

Name and location of the court where the motion or petition was filed:

Cumberland County Courthouse
1 Courthouse Square Carlisle Pa 17013

Docket or case number (if you know):

Don't Know

Date of the court's decision:

Don't Know

Result (attach a copy of the court's opinion or order, if available):

Don't have - Destroyed
In a fire

(3) Did you receive a hearing on your motion or petition?

☒ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Direct Appeal Superior Court
HOG PA

Docket or case number (if you know):

Don't Know

Date of the court's decision:

Don't Know

Result (attach a copy of the court's opinion or order, if available):

Don't have / Destroyed
In a fire

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: None further

GROUND FOUR: Sentences should have been merged under 42 Pa.C.S.A § 9765

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I was given a 3-6 year sentence with a 2-5 year sentence separately. The sentences stem from the same criminal episode and should have been run together for sentencing purposes. I was the only one out of my 3 co-defendants to receive a consecutive sentence.

(b) If you did not exhaust your state remedies on Ground Four, explain why:

Trial Counsel Gregory Abela said this issue had no merit because 15 years was a very lenient sentence given the nature of the crime, so I treated the issue like I did the other one at the advice of my counsel. I never bothered to pursue it until I started to learn the law.

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

Never got the chance to because Attorney said it was meritless

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

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Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

☐

Yes

☐

No

(4) Did you appeal from the denial of your motion or petition?

☐

Yes

☐

No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐

Yes

☐

No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

My Attorney said he wouldn't raise it because it was meritless and I received a lenient sentence of 15 years so I should not complain

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: Nine further

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☐ Yes ☒ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

Ground one - Administrative Interference Ground two - My trial Counsel said APSE didn't apply to me that the issue was meritless and he would not pursue Ground three - Administrative Interference Ground four - Attorneys said it was a meritless claim I got a lenient sentence as is.

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Ground Two & Ground four My Attorneys said they were meritless and he would not pursue them because they were a waste of time

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☒ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

1292-2014 Cumberland County Courthouse Direct Appeal
 Court Know Docket # ~~Spillover rule~~ Sufficiency of evidence, Preliminary transcripts
 Missing - Inconsistent Statements - Did not know Court's decision date - Affirmed and no
 Court order - Destroyed in flood - Cumberland County Courthouse - Pica 1292-2014 - Spillover Rule
 Failure + Court examine Failure to strike bias jurors & Don't know the Court's decision date and result for ~~the~~ ^{Pica} period
 ~ Court opinion / Destroyed in flood and in indigent - Cumberland County Pica - Counsel Abandonment - Failure
 to litigate / investigate mitigating factors, ~~the~~ Court's decision date August 7th 2022 and result was denied
 to Court opinion / Destroyed in flood

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.


Therefore, petitioner asks that the Court grant the following relief:

Time served its been over 10 years, I was sentenced without the benefit of A PSI and the only Co-Defendant to receive a consecutive sentence. I would like to be granted bail on this case until the final disposition of case.
or any other relief to which petitioner may be entitled.


Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on _____ (date).


Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

NAME: Johnie McAllister
D.C.P.# 0412
DAUPHIN COUNTY PRISON
501 MALL ROAD
HARRISBURG PA 17111-1299

8200 5011820121



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Office of the Clerk
United States District Court
1501 North 6th Street Suite 101
HGB PA 17102

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